IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

WP(C).No. 4932 of 2007(S)

OA.416/2003 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONERS:
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1. UNION OF INDIA REPRESENTED BY THE
SECRETARY TO GOVERNMENT OF INDIA,
CENTRAL PUBLIC WORKS DEPARTMENT,
MINISTRY OF URBAN DEVELOPMENT, NEW DELHI.

2. THE DIRECTORATE GENERAL OF WORKS,
CENTRAL PUBLIC WORKS DEPARTMENT,
NIRMAN BHAVAN, NEW DELHI.

3. THE CHIEF ENGINEER,
OFFICE OF THE CHIEF ENGINEER,
SOUTH ZONE III, CENTRAL PUBLIC WORKS DEPARTMENT,
KENDRIAYA SADAN, KORAMANGALA, BANGALORE.

4. THE SENIOR ACCOUNTS OFFICER,
PAY AND ACCOUNTS OFFICE,
CENTRAL PUBLIC WORKS DEPARTMENT (SOUTH ZONE),
MINISTRY TO URBAN DEVELOPMENT,
GOVERNMENT OF INDIA, RAJAJI BHAVAN, BASANT NAGAR,
CHENNAI- 600 090.

5. THE SUPERINTENDING ENGINEER,
TRIVANDRUM CENTRAL OFFICE, CENTRAL PUBLIC WORKS
DEPARTMENT, TRIVANDRUM-4.

6. EXECUTIVE ENGINEER (ADMINISTRATION),
TRIANDRUM CENTRAL CIRCLE,
CENTRAL PUBLIC WORKS DEPARTMENT,
TRIVANDRUM.

7. EXECUTIVE ENGINEER,
CALICUT CENTRAL DIVISION,
CENTRAL PUBLIC WORKS DEPARTMENT,
KOZHIKODE.

8. EXECUTIVE ENGINEER (ADMINISTRATION),

TRIVANDRUM CENTRAL CIRCLE,
CENTRAL PUBLIC WORKS DEPARTMENT,
THIRUVANANTHAPURAM.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL,SR.PANEL

RESPONDENT:

V.C.KUNHAMMED, S/O.SOOPY,
RESIDING AT TAJ HOUSE, PATHIYARAKKARA, VADAKARA,
PIN- 673 111, LAST EMPLOYED AS ASSISTANT ENGINEER
IN THE OFFICE OF THE ASST.ENGINEER, CALICUT
CENTRAL SUB DIVISION III,CENTRAL PUBLIC WORKS DEPT
THANA,KANNUR,UNDER CALICUT CENTRAL DIV.,CALICUT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR &

K.P.BALACHANDRAN, JJ.

W.P.(C) NO. 4932 OF 2007-S

Dated 20th November, 2007.

JUDGMENT

Balakrishnan Nair, J.

The petitioners, who are the respondents in O.A.No.416/2003 before the Central Administrative Tribunal, Ernakulam Bench, attack Ext.P1 order passed by the Tribunal in the said O.A. The only point that is canvassed before us is the correctness of the direction of the C.A.T to give the respondent herein a fresh chance for re-option. Though, various grounds are raised, the learned counsel fairly submits that he is pressing only Ground E in this writ petition, which reads as follows:

> "The Tribunal ought to have found that as per FR 22(1)(a)(I) and GIO (16) below FR 22 the option has to be exercised within one month of the date of promotion and the option exercised will be final. There is no specific provision to accept the fresh option to get his pay fixed and such option is not admissible as per FR 22(1)(a)(I). Therefore the Tribunal has erred in directing the petitioners to allow the respondent to exercise fresh option to get his pay fixed."

Other points raised by the petitioners are covered against them by the

judgment of this Court in W.P.(C) No.7437/2007 dated 6.3.2007. As per the aforementioned ground, the petitioners submit that the chance given to the respondent for a second option is unsustainable in law.

2. But, we notice that in para 6 of Ext.P1 order of the C.A.T., the Tribunal has relied on Government of India instructions, providing for revised option in the case of material change in the factual position arising out of the legal decisions/rules. The petitioners have not pleaded in the writ petition that there are no such instructions issued by the Government of India or that such instructions are not applicable to the facts of the case. In the absence of any challenge in this regard raised in the pleadings, the writ petition is not maintainable. Accordingly, the writ petition is dismissed.

K.BALAKRISHNAN NAIR, JUDGE.

K.P.BALACHANDRAN, JUDGE.

Nm/